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REMARKS

Claims 34-100 are currently pending in the present application. Of these claims, Claims 36, 37, 40-48, 57, 58, 61-69, 76-96 and 100 have been withdrawn from consideration. New claims 101-106 have been added by the present amendment. This leaves Claims 34-35-38-39, 49-56, 59-60, 70-75, 97-99 and 101-106 currently under consideration in the present application. A deposit account authorization for the new Claims 101-106 accompany the present amendment.

Of these claims, Claims 34-35-38-39, 49-56, 59-60, 70-75, 97-99 stand rejected, and Claims 101-106 have not yet been acted on. It is presumed that the rejection in view of the combination of Bartels, et al. and Daniell, et al. is one of obviousness under 35 USC 103, as stated in the Official Action of February 2, 2004, although anticipation under 35 USC 102(b) is restated.

In addition to the reasons stated in the last Official Action for the rejection, the Examiner, in response to the amendment of Claim 34 to positively claim a "pharmacologic agent", states that "oxygen is being delivered in the prior art and it is the Examiner's position that oxygen is clearly a pharmacologic agent." In a telephone interview with Examiner Thompson on May 24, 2004, it was pointed out that neither Bartels, et al. nor Daniell, et al., showed the delivery of oxygen, but showed the delivery of room air to the patient. It was pointed out that Steadman's Medical Dictionary gives a definition for "oxygen" which states: A medicinal gas that contains not less than 99.0% by volume of O₂. It is first pointed out that "medicinal" is not "pharmacologic", and the references show neither. Examiner Thompson agreed that he would research the art as to this issue.

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Applicants wish to add to the above that Steadman's Medical Dictionary defines "pharmacology", of which "pharmacologic" is a derivative, as "The science concerned with drugs, their sources, appearance, chemistry, actions, and uses". Therefore, a pharmacologic agent is one that acts on the body like a drug. As stated above, air cannot do this. Thus, the claims are allowable over the prior art.

No Motivation to Combine

All of the previous arguments concerning lack of motivation to combine are hereby restated as if fully incorporated herein.

Claims 34-35, 38-39 and 49-54 are allowable at least because they require the addition of a pharmacologic agent to a gas stream, and this has not been shown by the Examiner.

Claims 55-56, 59-60 and 70-75 are allowable at least because they require the addition of a pharmacologic agent to a gas stream within a single chamber, and the Examiner has not shown this.

Claims 97-100 are allowable at least because they require the admixing of carbon dioxide gas and a pharmacologic agent in at least a single chamber, and the Examiner has not shown this.

New Claim 101 is allowable at least because it requires the gas with the admixed agent to be delivered to the peritoneum of a patient. None of the references show this.

New Claims 102-105 are allowable at least because they require a solid or liquid phase pharmacologic agent, and the Examiner has not shown this in the prior art of record.

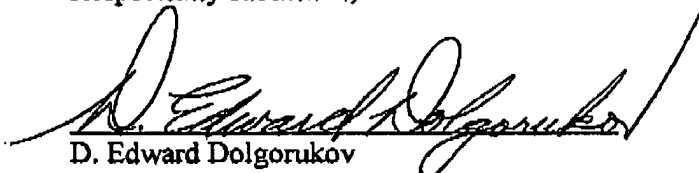
Applicants also wish to comment on an earlier deletion that they made to the specification in an Office Action response dated August 10, 2001. Applicants deleted language

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stating that the term "a" can mean "one or more" when used in the claims. Applicants deleted that language at the request of the Examiner. Applicants wish to make it clear that, despite their deletion, the use of the terms "a" or "an" in the claims means "one or more" where the claims also contain the term "comprising". The Court of Appeals for the Federal Circuit has recently confirmed that this is the ordinary meaning of "a" or "an" when used in a claim along with the term "comprising". *Scanner Technologies Corp. v. ICOS Vision Systems, Corp.* 70 U.S.P.Q. 2nd 1900 (Fed. Cir. 2004). Applicants did not intend to deviate from this ordinary meaning by their earlier deletion and wish to make that clear.

In view of the above amendments, and remarks explanatory thereof, a favorable reconsideration of the present application, and the passing of this case to issue, is courteously solicited. In view of the undersigned attorney's difficulty in reaching the Examiner in charge of the present application, a telephone interview is specifically requested if the present case is not in condition for allowance.

Respectfully submitted,



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